

REMARKS

Claims 1-6, 20 and 33 are pending in the present application. Claims 7-19 21-32, 34-48 have been withdrawn from consideration as being directed to non-elected subject matter. The Action has rejected claims 1, 2, 5-6, 20 and 33, and objected to claims 1-6, 20 and 33. In view of the following remarks, however, Applicants respectfully reconsideration of the finality of the restriction requirement and the rejection and objection to the claims. In fact, Applicants submit that all the claims are allowable.

I. Restriction Requirement

The Action noted that the elected species, 3-guanidinecarbonyl-1-(7-methyl-7H-pyrrolo[2,3-d]pyrimidin-4-yl)-1 H-indole, appeared to be allowable over the prior art of record. Thus, the Examiner extended the search of the Markush-type claim to determine if prior art exists that would anticipated or render obvious the Markush-type claim with respect to a nonelected species. More particularly, that search of the Markush-type claim was extended to include non-elected species of formula (I) wherein Ar is quinoline. Following that search, the Examiner alleged the following

As prior art has been found which anticipates the above identified nonelected species wherein Ar is quinoline, the Markush-type claims are rejected as follows and the subject matter of the claims drawn to nonelected species held withdrawn from consideration. Claims 1-6, 20 and 33 have been examined to the extent that they are readable on the elected embodiment and the above identified nonelected species. Since art was found on the nonelected species, subject matter not embraced by the elected embodiment or the above identified nonelected species is therefore withdrawn from further consideration.

It has been determined that the entire scope claimed is not patentable.

Additionally, as per the petition decision of 6/26/07, the restriction between Groups I-III is considered proper and is FINAL. In accordance with MPEP 821.04, rejoinder of product claims with process claims commensurate in scope with the allowed product claims will occur following a finding that the product claims are allowable. Until, such time, a restriction between product claims and process claims is deemed proper. Additionally, in order to retain the right to rejoinder, Applicant is advised that the process claims should be amended during prosecution to maintain either dependency on the product claims or to otherwise include the limitations of the product claims.

Applicants traverse this restriction requirement and request reconsideration in view of the comments that follow. In particular the Examiner has noted that the Lang reference

discloses 1) compounds that could be substituted by a guanidyl moiety at the 3-position, and 2) Ar as a quinolinyl, i.e., N-bicycloheteroaryl, substituent on the nitrogen of the indole. However, Applicants submit again (see paper filed June 26, 2006 at page 5, line 15-16) that Lang does not the N-bicycloheteroaryl substituents of the presently claimed indole derivatives, i.e., N-bicycloheteroaryl which may be linked via any of its positions and which is substituted in at least one of its positions by alkyl having 1, 2, 3, 4, 5 or 6 carbon atoms, halogen, nitro, NRaRb, alkylcarbonylamino having 1,2,3 or 4 carbon atoms, hydroxyl, alkoxy having 1,2,3,4,5 or 6 carbon atoms, S(O)_nR4, CO₂H, alkoxycarbonyl having 1, 2, 3, 4, 5 or 6 carbon atoms, alkylcarbonyl having 1,2,3,4,5 or 6 carbon atoms, CONRaRb, CN, polyfluoroalkyl having 1,2,3 or 4 carbon atoms, polyfluoroalkoxy having 1,2 or 3 carbon atoms or SO₃H. In fact, Lang clearly discloses that when Y is NR(7), R(7) is R(8)-(C_nH_{2n})-, and n is 0, then R(8) could be unsubstituted or substituted (C₂₋₆)-alkenyl, (C₃₋₁₀)-cycloalkyl, phenyl, and unsubstituted quinolinyl or isoquinolinyl but not substituted quinolinyl or isoquinolinyl. See Lang broadest and preferred embodiments: 1) Col. 1, lines 30, 42, 47-56, and 66, and Col. 2 lines 9-10; 2) Col. 2, lines 20, 45-53, and 63, and Col. 3 lines 3-4; and 3) Col. 3 lines 8, 24-26, 33 and 36-37. More importantly, while Lang does disclose that quinolinyl and isoquinolinyl moieties can be substituted, however that is only for embodiments wherein one of the other respective substituents R(1) to R(5) is R(8)-(C_nH_{2n})-Z-, n is 0 and Z is a linker, then R(8) could be unsubstituted or substituted quinolinyl or isoquinolinyl. See Lang preferred embodiments: 1) Col. 4, lines 8-11, 23-27, 35-36, 54-56, and Col. 5 lines 1-5; 13, 30-39, and 45; 2) Col. 6, lines 13-16, 27-31, 39-40, 50-52, and 63-66, and Col. 7 lines 9-10, 14, and 21-24; and 3) Col. 7 lines 53-56, and 60-63, and Col. 8 lines 1, 10-12, 14-17, 23, 25-31 and 36. Furthermore, in each of the aforesaid preferred embodiments wherein the substituents R(8) could be unsubstituted or substituted quinolinyl or isoquinolinyl, those embodiments also disclosed R(7) as a number

of things but never indicated that R(7) could be an unsubstituted or substituted quinolinyl or isoquinolinyl. Therefore, it is submitted that Lang teaches against the nitrogen of the indole in the instant application being substituted by a substituted N-bicycloheteroaryl. Thus, Lang can anticipate or render obvious Applicants claimed invention, and the restriction thereof withdrawn.

III. Objection of Claims 1-6, 20 and 33

The objection of the claims was noted as the claims contained non-elected subject in view of the Examiner's determination that the entire scope of the claims was not patentable in view of the Lang prior art. Applicants traverse the objection and request its withdrawal in view of the arguments noted supra. More particularly, Applicants have indicated the impropriety of the restriction and thus submit that the objection rendered consequential thereto is also improper. Thus, Applicants request the reconsideration and withdrawal of the objection.

III. Rejection of Claims 1, 2, 5, 6, 20 and 33 Pursuant to 35 U.S.C. §103

The Action also rejects claims 1, 2, 5, 6, 20 and 33 over Lang et al. for the reasons noted in the restriction requirement. Applicants traverse the rejection.

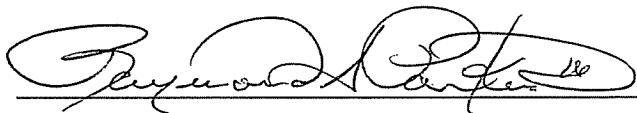
As noted supra, Lang does not disclose a substituted quinolinyl or isoquinolinyl as being substituted on the nitrogen of an indole molecule. In fact, Lang only notes other specific moieties at that position which could be substituted. Furthermore, while Lang does disclose substituted quinolinyl and isoquinolinyl moieties, however those moieties are only noted as being present at positions other than that of the nitrogen of an indole. In view of the aforesaid, Applicants respectfully submit that the rejection is improper and should be withdrawn.

IV. Conclusion

Applicants respectfully submit that, in the absence of any prior art to compromise any of the pending claims, Applicants request an indication of allowable subject matter.

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. **18-1982** in the name of Aventis Pharmaceuticals Inc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Raymond S. Parker, III', is written over a horizontal line.

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